

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

ALICIA WOLGAMUTH

Claimant,

V.

CATHOLIC DIOCESE OF WICHITA

Respondent,

and

CHURCH MUTUAL INS. CO.

Insurance Carrier.

CS-00-0446-980

AP-00-0451-321

ORDER

Claimant requests review of the June 2, 2020, preliminary hearing Order entered by Administrative Law Judge (ALJ) Gary K. Jones.

APPEARANCES

Terry J. Torline appeared for Claimant. Jeffrey A. Mullins appeared for Respondent and its Insurance Carrier.

RECORD AND STIPULATIONS

The Board adopted the same stipulations and considered the same record as the ALJ.

ISSUES

The ALJ found the report of Dr. Hughes to be more persuasive than the report from Dr. Parker. In so doing, the ALJ found Dr. Hughes' diagnosis of a preexisting anxiety disorder more consistent with the facts. Claimant's request for authorization of Dr. Scott for psychological treatment was denied.

The Claimant requests review of the Order denying Claimant's request for authorization of Dr. Scott. Claimant contends she proved she suffered a traumatic neurosis which arose out of and in the course of her employment. Respondent argues Claimant did not meet her burden of proving her PTSD arose out of and in the course of her employment.

FINDINGS OF FACT

Alicia Lynn Wolgamuth is 51 years old and worked for Respondent for approximately eight years. Claimant is a paraprofessional, latchkey, and lunchroom aid. Claimant's main duties are assisting children with their schoolwork, helping with lunch and assisting teachers in whatever they need done. Claimant floats between classes filling in where needed.

On September 20, 2018, Claimant was having lunch with a friend. She received a telephone call from a student saying a teacher was having issues with a student and was bringing him down the hallway. She heard screaming and yelling. She located the angry, first grade student and the teacher outside of the music classroom. The teacher had a hold of the student from behind, underneath the arms. Claimant said the student was yelling, screaming, and kicking. The student screamed he was going to kill the teacher and Claimant. She squatted down to be on the same level as the student while trying to calm him. When Claimant started to get up, the student kicked her leg out from underneath her causing her to fall, landing on her hip. Claimant felt immediate pain.

Paramedics arrived, placed Claimant onto a board and transported her to Wesley Hospital. Claimant received medical treatment from Dr. Brandon Scott, which included hip surgery the next day for a non-displaced femoral neck fracture. Claimant was released to return to work with restrictions on January 3, 2019, and found to be at maximum medical improvement on August 14, 2019. Dr. Scott opined Claimant has a 7% permanent partial impairment to the left lower extremity pursuant to the *AMA Guides, 6th Edition*.

Claimant began noticing non-physical symptoms within a couple of weeks of her injury. The symptoms included inability to sleep, wanting to be alone, not wanting to be alone, crying, irritability and anxiety. These symptoms continue today. She was embarrassed to share her symptoms with anyone. Dr. Scott's medical records contain no record of her symptoms. No medical records from her personal physician were presented confirming the existence of her symptoms.

Claimant was evaluated by Dr. Lance Parker, a psychologist, at the request of her attorney on February 14, 2020. Claimant denies experiencing any of these type of symptoms prior to her injury other than in 1996 when she briefly took Prozac for anxiety. Dr. Parker diagnosed Claimant with Post Traumatic Stress Disorder (PTSD) and identified Claimant's work injury as the cause. Dr. Parker explained PTSD is a condition in which the person experiences something traumatic which brings about stress as a self-defense. The longer a traumatic event is not addressed, the greater the level of debilitating stress the sufferer experiences. He recommended Claimant begin psychotherapy immediately to address the traumatic experience and anti-anxiety medication. He expressed no specific timetable for full recovery, but most patients can expect to see good progress in eighteen to twenty-four sessions.

Respondent referred Claimant to Dr. Patrick L. Hughes, a psychiatrist, for a psychiatric evaluation on May 7, 2020. Dr. Hughes opined Claimant did not have PTSD or any psychological condition attributable to her work injury.

PRINCIPLES OF LAW AND ANALYSIS

By statute, preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.¹ Moreover, this review of a preliminary hearing order has been determined by only one Board Member, as permitted by K.S.A. 2018 Supp. 44-551(l)(2)(A), as opposed to being determined by the entire Board as it is when the appeal is from a final order.²

The Board first addresses the jurisdictional issue. The Kansas Workers Compensation Act states the Board's authority to consider appeals of preliminary orders is limited to questions of whether the employee suffered an accident, repetitive trauma or resulting injury, whether the injury arose out of and in the course of employment, whether notice was given or whether "certain defenses" apply.³ Claimant sought medical treatment for a psychological disorder at a preliminary hearing before the ALJ. In general, preliminary hearing orders granting or denying medical benefits are not subject to Board review. The issue presented, however, is whether Claimant has a traumatic neurosis arising out of and in the course of her employment requiring additional medical treatment?

Claimant has the burden of proof to establish her right to compensation and to prove the conditions on which her right depends.⁴ Kansas recognizes the compensability of traumatic neurosis injuries.⁵ Traumatic neurosis is a broad legal term and is not a specific psychiatric diagnosis.⁶ For Claimant to establish a compensable claim for traumatic

¹ K.S.A. 44-534a; see *Quandt v. IBP*, 38 Kan. App. 2d 874, 173 P.3d 1149, rev. denied 286 Kan. 1179 (2008); *Butera v. Fluor Daniel Constr. Corp.*, 28 Kan. App. 2d 542, 18 P.3d 278, rev. denied 271 Kan. 1035 (2001).

² K.S.A. 2018 Supp. 44-555c(j).

³ See K.S.A. 44-534a(a)(2).

⁴ See K.S.A. 44-501b(c).

⁵ See *Love v. McDonald's Restaurant*, 13 Kan. App. 2d 397, 771 P.2d 557, rev. denied, 245 Kan. 784 (1989).

⁶ See *Adamson v. Davis Moore Datsun, Inc.*, 19 Kan. App. 2d 301, 308, 868 P.2d 546 (1994).

neurosis, she must establish a work related physical injury, symptoms of the traumatic neurosis and the neurosis must be directly traceable to the physical injury.⁷

The ALJ was provided competing medical opinions regarding the issue of whether the traumatic neurosis arose out of and in the course of her employment. Claimant provided the opinions of Dr. Parker in support of her position, Respondent, Dr. Hughes. The ALJ found “Claimant has not met her burden to prove that the work injury is the prevailing factor for her medical condition and possible present need for treatment.”⁸ This Board Member agrees with the ALJ’s analysis and conclusion.

Dr. Parker arrived at his opinions without verifying any of Claimant’s symptoms, no review of any medical records and without benefit of any psychological testing. Moreover, he gave no explanation as to how he arrived at his diagnosis Claimant suffers from PTSD. He provided no prevailing factor opinion.

The opinions contained in Dr. Hughes report are just the opposite. He goes into great detail as to why Claimant does not have PTSD.

“Factually, there is no credible medical possibility that Ms. Wolgamuth ever developed PTSD. We physician psychiatrists note in the American Psychiatric Association’s DSM-V that, in order for a person to actually develop true PTSD the person must have experienced “exposure to actual or threatened death, serious injury or sexual violence” (page 271); none of which occurred in the circumstances of her physical assault by the boy student. Moreover, she was not repeatedly or persistently assaulted or attacked by him, and immediately escaped his reach (so was not gripped with the fear of being trapped & helpless to avoid further assault). Accordingly, could not develop true PTSD. It seems most medically probable that Mrs. Wolgamuth’s reports of alleged textbook PTSD symptoms therefore are grossly exaggerated or even frankly feigned, for unclear reasons.”⁹

Claimant acknowledged to Dr. Hughes “she never feared for her life or her safety, and also that she did not believe the boy’s angry diatribe about “I’m going to kill you.”¹⁰ This acknowledgment supports Dr. Hughes’ conclusion Claimant does not have PTSD.

⁷ See Love.

⁸ See ALJ Order (June 2, 2020) at 2.

⁹ See Hughes IME (May 7, 2020) at 4.

¹⁰ See Hughes IME (May 7, 2020) at 2.

Dr. Hughes reviewed all the available medical records and noted “nowhere in any of Dr. Scott’s 10 months of orthopedic records is there any reference to Ms. Wolgamuth reporting or experiencing any psychiatric distress.”¹¹ Perhaps more telling is the absence of any medical reports from Claimant’s personal physician supporting her contention she has had symptoms essentially from the date of her accidental injury. It is not unusual for Claimant not to share her psychological symptoms with Dr. Scott. He is an orthopedic surgeon treating her hip. It seems unlikely Claimant wouldn’t share the presence of those complaints with her personal physician who was prescribing her on-going medication for other issues. Claimant failed to prove she sustained a compensable psychological or psychiatric injury.

DECISION

WHEREFORE, it is the finding, decision and order of the undersigned Board Member the Order of Administrative Law Judge Gary K. Jones dated June 2, 2020, is affirmed.

IT IS SO ORDERED.

Dated this 23rd day of July 2020.

CHRIS A. CLEMENTS
APPEALS BOARD MEMBER

cc: Via OSCAR

Terry J. Torline, Attorney for Claimant
Jeffrey A. Mullins, Attorney for Respondent and its Insurance Carrier
Gary K. Jones, Administrative Law Judge

¹¹ See *id.*